New Straits Times Press (M) Bhd & Ors v Hazahar bin Idris

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1-12-276 OF 1995
NIK HASHIM J
13 AUGUST 1998

Civil Procedure *— Jurisdiction — Civil jurisdiction of sessions court — Whether sessions court has jurisdiction to award general damages in excess of RM250,000 when damages are awarded against four defendants as separate and several tortfeasors in a single action — Subordinate Courts Act 1948 s 65(1)(b)*

Civil Procedure *— Judgments and orders — No reason given for granting of order — Whether order was justified*

The issues in this case were whether: (i) the sessions court had jurisdiction to award damages in excess of RM250,000 — contrary to the sessions court civil jurisdictional limit provided by s 65(1)(b) of the Subordinate Courts Act 1948 — when the damages were awarded against four defendants as separate and several tortfeasors in a single action; and (ii) the sessions judge was justified in making an order against two of the defendants without giving any reason for it.

Held, allowing the appeal with costs:

(1) The sessions court has jurisdiction to award a maximum amount of RM250,000 in respect of a tortfeasor. The court in a single action like the present case cannot award in respect of all the four appellants a total sum exceeding the limit of RM250,000. Therefore, the award of separate sums of general damages for the total sum of RM640,000 against the four appellants was erroneous and could not be allowed to stand (see p 567G–I); *Mohd Mustafa bin Shuib & Ors v Zakaria bin Subri & Anor* [1990] 1 CLJ 1170 followed; *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493 distinguished.

(2) The order against the defendants could not be said to be justified as the learned judge did not give reasons as to how he came to his conclusions. Without the benefit of his reasons, it was doubtful whether he applied the correct principles of law in making the order (see p 568B).

[Bahasa Malaysia summary

Isu-isu dalam kes ini adalah sama ada: (i) mahkamah sesyen mempunyai bidang kuasa untuk mengawardkan ganti rugi melebihi RM250,000 — bertentangan dengan had bidang kuasa sivil mahkamah sesyen yang diperuntukkan oleh s 65(1)(b) Akta Mahkamah Kehakiman 1948 — walhal ganti rugi telah diawardkan terhadap

empat defendan sebagai pesalah tort yang berlainan dan berasingan dalam suatu tindakan; dan (ii) hakim sesyen adalah berjustifikasi dalam membuat perintah terhadap dua defendan tanpa memberi sebarang alasan untuknya.

Diputuskan, membenarkan rayuan dengan kos:

(1) Mahkamah sesyen mempunyai bidang kuasa untuk membuat award sehingga jumlah maksima RM250,000 berhubung dengan pesalah tort. Dalam suatu tindakan seperti kes ini, mahkamah tidak boleh membuat award yang jumlahnya melebihi sebanyak RM250,000 berkaitan dengan keempat-empat perayu. Maka, award ke atas jumlah berasingan ganti rugi am untuk jumlah sebanyak RM640,000 terhadap empat perayu tersebut adalah salah dan tidak boleh dikekalkan (lihat ms 567G–I); *Mohd Mustafa bin Shuib & Ors v Zakaria bin Subri & Anor* [1990] 1 CLJ 1170 diikut; *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493 dibeza.

(2) Perintah terhadap defendan-defendan tidak boleh dikatakan adalah berjustifikasi oleh kerana hakim yang arif tidak memberi alasan mengenai bagaimanakah beliau mencapai kesimpulannya. Tanpa manfaat alasan beliau, adalah diragukan sama ada beliau telah memakai prinsip undang-undang yang betul dalam membuat perintah tersebut (lihat ms 568B).]

Notes

For a case on jurisdiction of sessions court, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 2855.

For cases on judgments and orders, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2724–2805.

Cases referred to

Chong Choon Wah v Lam Sau Fong (f) & Anor [1990] 1 CLJ 1134 (refd)

Masa Freight Services Sdn Bhd & Anor v Sinar Mekar Sdn Bhd & Anor [1996] 3 AMR 3896 (refd)

MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals [1995] 2 MLJ 493 (distd)

Mohd Mustafa bin Shuib & Ors v Zakaria bin Subri & Anor [1990] 1 CLJ 1170 (folld)

Legislation referred to

Subordinate Courts Act 1948 s 65(1)(b)

Subordinate Courts (Amendment) Act 1994 s 5

V Vijaykumar (*Albar Zulkifli & Yap*) for the appellants.

M Puravalen (*Kumar Jaspal Quah & Aishah*) for the respondent.

Cur Adv Vult A

Nik Hashim J: This case concerns the civil jurisdiction of the sessions court. The issue is whether the sessions court has the jurisdiction to award general damages in excess of RM250,000 when the damages are awarded against four defendants as separate and several tortfeasors in a single action. B

Briefly, the facts are that the New Straits Times Press (M) Bhd ('the NSTP') and three others ('the appellants'), appeal against the learned sessions court judge, Khairel Anuar Ujang's judgment, on quantum for libel for the total sum of RM640,000 against all the appellants which was given on 18 October 1995. The respondent, then 29 years old and a C bachelor, was a duty-cum-public relation officer of a shopping centre in Kuala Lumpur. The appellants had, in their articles in the *Malay Mail* in May 1991, called the respondent, amongst other things — bisexual, conman, casanova, seducer of young boys and women, fleecer, one who indulged in sex, lies and goodbye tactics. The appellants had also appealed against the decision on liability but the appeal was dismissed by Azmel J, vide the D Kuala Lumpur High Court, Civil Appeal No R1–12–276–95 dated 22 November 1997. The learned sessions court judge awarded general damages as follows:

(1) against the first appellant (the NSTP), as the publisher and distributor of the *Malay Mail* — RM220,000; E

(2) against the second appellant (Badrolhisham Bidin), a journalist of the first appellant — RM100,000;

(3) against the third appellant (Esther Tan), a journalist of the first appellant — RM100,000; and F

(4) against the fourth appellant (the *Malay Mail*), the editor of the first appellant — RM220,000,

plus interest on the above sums, at the rate of 8% per annum from the date of the judgment to the date of full recovery and costs. The learned judge also ordered the first and the fourth appellants for the publication of G an apology, for two consecutive days.

It is the submission of En V Vijaykumar, learned counsel for the appellants, that the learned judge erred in law in that he awarded damages in excess of RM250,000, the sessions court civil jurisdictional limit, as provided by s 65(1)(b) of the Subordinate Courts Act 1948 ('the Act') and H cited three cases in support:

(i) *Chong Choon Wah v Lam Sau Fong (f) & Anor* [1990] 1 CLJ 1134;

(ii) *Mohd Mustafa bin Shuib & Ors v Zakaria bin Subri & Anor* [1990] 1 CLJ 1170; and

(iii) *Masa Freight Services Sdn Bhd & Anor v Sinar Mekar Sdn Bhd & Anor* I [1996] 3 AMR 3896.

With respect, I agree with the submission.

A Section 65(1)(b) of the Act states:

> Subject to the limitations contained in this Act, a Sessions Court shall have jurisdiction to try all other actions and suits of a civil nature where the amount in dispute or the value of the subject-matter does not exceed two hundred and fifty thousand ringgit.

B KC Vohrah J in *Mohd Mustafa bin Shuib* held that irrespective of whether there is one plaintiff or several plaintiffs or one cause of action or several causes of action in one action or suit before the sessions court, the total amount that the sessions court may award in respect of all the plaintiffs and causes of action joined in that one action or suit cannot exceed the C value limit of RM100,000, which is now increased to RM250,000, effective 24 June 1994 by s 5 of the Subordinate Courts (Amendment) Act 1994 (Act A887). Therefore, in my view, since this action was commenced by the respondent/plaintiff in a single action, regardless of the number of appellants/defendants to the claim, the total amount to be recovered by the respondent against the four appellants in this action could not exceed the D amount of the sessions court civil jurisdictional limit, ie RM250,000. The respondent had filed the action in the sessions court. Thus, he is subject to the award limit of RM250,000, unlike the High Court, which has unlimited monetary jurisdiction. Accordingly, the total sum of the award cannot exceed the limit, even though the damages were awarded against E the appellants as separate and several tortfeasors.

Learned counsel for the respondent, En M Puravalen, in supporting the award, argued that the sessions court is competent to award damages up to the maximum of RM250,000 per tortfeasor, and he cited the case of *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493 in support.

F As I have adverted to earlier, the High Court has unlimited monetary jurisdiction. *MGG* is a High Court case, and therefore, there is no ceiling of the aggregate amount in respect of all the defendants. In *MGG* case, the High Court awarded separate sums of general damages totalling RM10m for libel against seven defendants. The appeal against the award was G dismissed by the Court of Appeal. In the present case, however, being a sessions court case, the ceiling in respect of all the four appellants is RM250,000. Though the sessions court has the jurisdiction to award maximum amount of RM250,000 in respect of a tortfeasor, the court in a single action like this case cannot award in respect of all the four appellants a total sum exceeding the limit of RM250,000. If it does so award, then the H award is wrong, being contrary to law for which this court is entitled to have it set aside. Thus the award of separate sums of general damages for the total sum of RM640,000 against the four appellants is erroneous and therefore, it cannot be allowed to stand. Indeed on this ground alone, I consider it sufficient for the appeal to be allowed.

I However, there is another matter which merits my consideration. This concerns the sessions court order for the publication of an apology by the first and fourth appellants as stated by the judge at p 159 of the appeal record:

Defendan pertama dan keempat hendaklah membuat 'apology' secara terbuka tanpa menamakan pihak plaintif dalam struktur ayat yang dipersetujui oleh pihak plaintif dan diluluskan oleh peguam plaintif. 'Apology' ini hendaklah disiarkan secara 'equal prominence' dan selama dua hari berturut-turut.

The learned judge, who has since left the service, however, did not give reasons for the order. So, without the benefit of his reasons as to how he came to his conclusion and whether he applied the correct principles of law in making the order, especially after awarding substantial damages against the appellants, this court cannot say with confidence that the order is justified in the circumstances of this case.

In the result, I allow the appeal with costs to the appellants, set aside the award of RM640,000, the orders of interest and 'apology', and order that the general damages be assessed and determined by the deputy registrar of this court on a date to be fixed by her.

Appeal allowed with costs.

Reported by Mohd Rizal Abidin